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90-401

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

BETSEY WARREN LEBBOS,

Petitioner

v.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

PETITIONER'S SUPPLEMENTAL APPENDIX

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STATE BAR COURT

STATE BAR OF CALIFORNIA

In the matter of

BETSEY WARREN LEBBOS

A member of the State Bar

CASE NO. 89-TE-10035

/

The above matter relates to proceedings re involuntary transfer to an inactive status upon a Finding that the attorney's conduct poses a substantial threat of harm to the public or to the attorney's clients. It was heard before LINUS J. DEWALD, a Compensated Referee.

Notice of these proceedings was filed and served upon Respondent in the time, form, and manner specified by Rule 791 of the Rules of Procedure of the State Bar Court, and the verified

application was thereafter promptly submitted to a referee designated pursuant to rule 790.

Respondent did not file with the Office of the Clerk, State Bar Court, within ten (10) days from the date of service of the application by certified mail any verified response and request that the hearing which has been set pursuant to rule 791 be held.

Upon the expiration of the said ten (10) day period prescribed by rule 792, the undersigned Compensated Referee has determined under Rule 793 of the Rules of Procedure of the State Bar that said hearing shall not be held because :

1. The Respondent has not requested a hearing in the time and manner

provided by said Rules, and

2. The Office of Trial Counsel has not requested a hearing in the time and manner provided by said Rules, and

3. The undersigned designated Referee has determined that the previously set hearing will not materially contribute to the decision on the involuntary inactive enrollment application.

JUDICIAL NOTICE

At the request of the Examiner herein and in accordance with Evidence Code Sec. 452, this court takes judicial notice of the Decision of the Matter of Betsey Warren Lebbos, State Bar Court, # 86-0-17453, filed January 9, 1989, and attached to the Request for Judicial Notice and accompanying the

Application for Inactive Enrollment filed January 19,1989.

FINDINGS OF FACT, SERVICE

The Respondent, BETSEY WARREN LEBBOS, was given notice of these proceedings pursuant to Rule 791 of the Rules of Procedure of the State Bar.

COUNT ONE: FINDINGS OF FACT UNDER B & P. CODE SEC. 6007 (c) (2)

This count charges Respondent with conduct alleged to be in violation of Business and Professions Code sections 6068 (a), 6103, and 6106, also Rule 8-101 (A) of the Bar Rules of Professional Conduct.

1. The Respondent represented Robert L. Miller in a damage claim. She received a draft dated December 27,1986, payable to Robert L. Miller and Beth Lebbos in the sum of $ 2,500.00 from

the California State Automobile Association in settlement of her client's claim. (State Bar, Ex. 1)

2. Respondent did not have a trust account and has admitted that she did not use trust accounts for client's funds. (State Bar, Ex. 15, page 13). Instead, she deposited the draft in a personal account that she had with a San Jose branch of the California First National Bank. (State Bar Ex. 3, and testimony of Thomas Johnson, a bank officer.) Banks have a hold period on both out of state checks and drafts deposited in an account, but drafts take longer to clear. (Testimony of Thomas Johnson).

3. Client Miller received a check from Respondent dated February 6, 1986, in the sum of $ 1,587, the net recovery

to which he was entitled. (State Bar Ex. 2.)

4. At the time the draft was deposited, Respondent maintained two accounts with said bank. One was her checking account, and the other was designed as a " reserve account."

5. When Respondent deposited the draft in the Miller case, she endorsed it " Pay to the Order of Cash Reserve." She thus indicated that it was not to be deposited in her checking account and that the funds on payment of the draft were to be maintained in the reserve account. During the period in question, the balance in her checking account dropped below $ 0.00. (State Bar, Ex,. 3, and testimony of Thomas Johnson.)

The bank records indicate that at

all times material hereto however, there would have been adequate funds in the cash reserve account to pay Miller his $ 1,587.00 if the bank, as directed, had properly kept the draft on deposit in the reserve account.

In fact, when Miller's check cleared on February 11, 1986, there was, according to Respondent's own admission, a surplus of over $ 3000. 00 consisting of other personal funds in her cash reserve account.

But, if Respondent were to have paid Miller his $ 1,587. 00 before the draft cleared, it would have obviously had to have been from her own personal funds. A lawyer is not required to pay a client's claims against others out of the lawyer's own funds.

6. Regardless of whether the said

draft was deposited in either of Respondent's two accounts with the bank, the checking account or cash reserve account, it would nevertheless have been deposited in an account in which it was conmingled with Respondent's personal funds.

COUNT TWO: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with fraudulently altering a Court Order in violation of Business and Professions Code sections 6068(a), 6068 (d), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. The Respondent represented the father in a family law case in the Santa Clara County Superior County entitled Reginald Rhedrick, petitioner

v. Mila Opera Rhedrick, respondent, Case No. 629057. Attorney Bradford Baugh represented the mother therein.

2. The charge in the Notice to Show Cause is that Respondent altered a Court Order. Respondent asserted no Court Order was actuallly filed, and that in any event she did not alter it.

3. At the culpability hearing, Respondent cross-examined State Bar witnesses, but did not testify herself or call any witness on her own behalf.

4. A hearing involving custody of the two minor children of the parties was held before Commissioner Kittle on June 8, 1987. (State Bar, Ex. 5)

On June 9, 1987, Baugh, pursuant to Rule 17-A-11 of the local rules for

the Santa Clara Superior Court sent Respondent a letter enclosing a form of stipulation and a proposed Order which he asked her to approve and sign so that he could submit it to Commissioner Kittle. (State Bar, Ex. 6)

Baugh received no reply from Respondent. On June 12, 1987 Baugh write Respondent a second letter indicating that because he had not heard from Respondent, Baugh intended to submit the proposed Order, together with Baugh's correspondence with Respondent, to Commissioner Kittle on June 15, 1987. Baugh 's letter also advised Respondent to contact Commissioner Kittle directly if Respondent had any objections to having Baugh's Order signed by Commissioner Kittle.

5. A meeting between both counsel and

Commissioner Kittle was held on June 15, 1987, to discuss their respective differences as to the contents of the proposed Order. Thereafter, Commissioner Kittle signed and filed a document entitled " TEMPORARY ORDERS AFTER HEARING ." That Order included four minor handwritten changes appearing on pages 1 and 2. It was not, however, approved as to form by Respondent. (State Bar, Ex. 10)

6. Previously, on June 12, 1987, Respondent had filed a motion to modify the June 8th Order . Baugh was served with the original motion consisting only of pages 1 to 7. No temporary Order was attached.

After the above mentioned June 15 th meeting, Respondent filed and served the same motion with an altered

version of the June 15 Order. This time the motion had attached to it what was represented by Respondent to be Commissioner Kittle's Order of June 15, 1987.

It differed from the genuine Order signed by Commissioner Kittle in that significant changes, including the crossing out of some of its key provisions, were made in handwriting on page 3 of the altered document. Baugh identified the handwriting on the last page as that of Respondent Lebbos.

7. A certified copy of the afore-mentioned altered Order is State Bar, Exhibit 20, in evidence (See also State Bar, Ex. 11 and Respondent's Exhibit II.)

8. There was a further hearing in the Rhedrick case on June 22, 1987 on Res-

pondent 's motion to reconsider the June 8, 1987 Order. At that time Baugh brought to the Court's attention the alteration of the Order.

9. At the culpability hearing herein, Respondent, in cross-examining Comissioner Kittle, falsely and without foundation accused Commission Kittle of placing the altered Order in the filed. At such hearing, Respondent also made the same false and groundless accusation against Baugh.

COUNT THREE: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with concealing assets in violation of Business and Professions Code sections 6068 (a), 6068 (d), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. On or about December 21, 1984, in Lebbos v. Wooten, Linda Wooten obtained a judgment against Respondent in the amount of $ 51,000.00. On or about June 6, 1986, pursuant to Order of Examination, Respondent's deposition was taken in that case.

2. At such deposition, Respondent was questioned repeatedly whether she had billed clients, including Martha McCutcheon, a client in a trial that was scheduled to start the following Tuesday. Respondent testified that Respondent had not yet determined what to bill McCutcheon. (State Bar, Ex. 15, R.T. p 63, 1. 22 to pg. 64,1.28). Respondent also testified at that time that Respondent billed clients at the end of each case (State Bar, Ex. 15 at pg. 1 23 to pg. 1. 18.)

Respondent's said testimony was false because on June 4, 1986, two days before the said deposition, Respondent had prepared and sent to McCutcheon itemized bill for $ 1642. 50 . (State Bar, Ex. 18 and 19, and testimony of McCutcheon.)

3. At the culpability hearing, Respondent did not offer corrections to the said Deposition transcript, nor did Respondent offer testimony to rebut any of the statements appearing the said transcript.

4. At said Deposition, Respondent also testified that Respondent owned no stocks or bonds (State Bar, Ex. 15, pg. 36, l. 12-15). Such testimony was false because Respondent had $ 2019.98 in an E.F. Hutton account.

5. Respondent's said deposition tes-

timony that there were no funds owing to Respondent from any person was false in that one Alan Munn held in trust for Respondent at least $ 3653. (State Bar, Ex. 16, pg. 4, L. 10-13; Ex. 17, Schedule B-3.)

6. Respondent's own documentary evidence also substantiates the concealment charge. (Respondent's Ex. VVVV, a transcript on appeal of the hearing in July and September, 1986, before Judge Rushing in Lebbos v. Wooten.)

It includes reference to the discovery of covert bank accounts, here and in Florida. (Page 50, L. 17 to page 51, L. 6; page 56, L. 5-19) Also another contingent asset Respondent concealed was Respondent's pending personal injury action in Federal Court.

COUNT FOUR : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with improper conduct in three court incidents in violation of Business and Professions Code 6068 (a), (b), (d), (f), and (i), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. In or about February, 1987, Respondent became attorney for Sat Sandhir, the husband in the family law case of In re Sandhir.

2. The gravamen of Count four is that in or about April, 1987, Respondent made a series of false and defamatory accusations in an attempt to disqualify Judge James Stewart from hearing the case. The statements originally appeared in Respondent's Notice of

Disqualification for Cause and supporting Points and Authorities filed with the Court on Feb.15, 1987 (State Bar, Ex. 21)

While the motion was signed by Sandhir only, Respondent signed the supporting Points and Authorities as attorney for Sandhir.

3. The concluding paragraph of the Points and Authorities includes the following statement:

" It's clear one would reasonably entertain a doubt that Judge Stewart or any of his colleagues who wish to support his retention as a judge would be fair to Respondent or his children. They have been pawns of a bad Court too long. "

4. Judge Stewart filed a verified answer to the motion to disqualify

him, attaching to his answer an original Reporter's transcript of the proceedings in his Court pertaining to the case. Such transcript demonstrates the falsity of various allegations of Respondent's said motion. (State Bar, Ex. 21)

5. As a specific example of such falsity, Respondent had asserted that on May 7, 1987, Judge Stewart sent Sandhir home, then made an ex parte Order granting attorney fees to Janet Syphers, the opposing attorney in the Sandhir case. (State Bar, Ex. 21, pg. 2, L. 7-19)

Said Transcript shows that, to the contrary, Judge Stewart informed Sandhir that he should remain for other matters. (State Bar, Ex. 22, R.T. pg. 3, L. 14-17 and pg. 4, L. 13-16). Al-

so, Janet Syphers did not send Sandhir home.

6. At the hearing herein, Respondent refused to identify the factual basis for the charges against Judge Stewart. Respondent did not act in good faith when she filed said motion and supporting documents containing containing false statements.

7. Also in count 4, paragraph 3 therein charges that in the Sandhir case:

a. Respondent received a document entitled " Stipulation and Order " prepared by and signed by both opposing counsel and her client.

b. That Respondent altered said document without the consent or knowledge of such opposing counsel, and

c. That Respondent submitted such

altered document to the Court without informing the Court that the alterations were made without opposing counsel's consent.

8. Respondent received such Stipulation on or about March 24, 1987 with a cover letter from opposing counsel Janet Syphers. The letter recited that there was some urgency in handling the matter, so that the Sandhir child could return home from a hospital and asked Respondent to call Syphers when Respondent and Respondent 's client had signed the stipulation. (State Bar, Ex. 26, Ex. A). Respondent did not make the requested call.

At the hearing herein, Respondent asserted, without foundation, that the parties has reached an earlier agree-

ment signed as to the terms of the stipulation, that the tendered stipulation and Order was inconsistent therewith, and that Respondent altered it make it confirm to such alleged earlier agreement. Such assertion is untrue.

Following such alteration, Respondent filed the document with the Court on March 25, 1987. (State Bar, Ex. 25)

9. In her letter of April 16, 1987 to Judge Fogel, Respondent admitted that, unknown to Syphers, Respondent unilaterally altered the document. (State Bar, Ex. 27). In the last paragraph of such letter on page 3, Respondent states:

" I never spoke to Janet Syphers. His daughter had to be released that day from the mental hospi-

Exhibit C-23

tal, or go through another probable cause hearing and another fourteen days. I saw Syphers had sought to add things. I crossed them out, leaving the parties' true agreement intact."

Further, in the June 12, 1987 hearing before Judge Fogel, Respondent testified :

" I crossed out her surplus. That stipulation is word for word and that is Miss Sharma's relatives, who have told me exactly what the parties agreed to. " (State Bar, Ex. 19, R.T. pg. 19, L. 13-16).

10. At the hearing herein, Respondent asserted, without foundation, that such document entitled " Stipulation and Order " was not a stipulation. To

the contrary, Respondent intended that the said family court understand the document to include a stipulation, and that the court should rely on such understanding and act thereon. (Evidence Code, Sec. 623)

11. On March 11, 19877, the day after Respondent had received, altered such document and sent it to the court, Janet Syphers phoned Respondent. In the conversation, Respondent did not tell Syphers what Respondent had done. Respondent stated only that Respondent wished to make changes in the stipulation. Syphers objected to any change.

Respondent did not serve Syphers with a copy of the altered document. Syphers became aware of the alteration on April 1, 1987 only because of a chance meeting with Respondent at the

Court house. (State Bar, Ex. 26)

12. In the Sandhir matter, Judge Fogel found in his findings and Order after hearing that:

> " Attorney Lebbos specifically acknowledged making the deletions without notice to Attorney Syphers both in her pleadings and in open Court. " (State Bar, Ex. 30,L. 22-24)

13. When asked by the State Bar to explain her conduct in the Sandhir case, Respondent sent a letter dated August 12,1987, which stated, in part, " The Court acknowledged I made no alteration." (State Bar Ex. 32, 33)

14. The quoted statement in Respondent 's letter of August 12 th is both false and premature. Judge Fogel did not issue his decision until August

21, 1987. (State Bar, Ex. 30).

Neither does such decision exonerate Respondent. To the contrary, such decision reads, in part:

" Altering a stipulation and causing it to be presented to the Court without notice to opposing counsel are actions that strike at the heart of the judicial process. In a normal case such actions are properly a basis for sanctions, contempt proceedings, or both. The present case, however, must be viewed in a larger context."
(Pg. 14, L. 6-11).

It goes on to speak of her long experience as a family law lawyer who " at times has made thoughtful and constructive suggestions for improving

judicial practices and legislative policy." (Pg.4, L. 12-17). It then concludes that a punitive action by the Court would only serve a short term basis, and that:

" The Court is convinced that a meaningful response to Attorney Lebbos' ongoing conduct is the responsibility of the State Bar of California .(State Bar, Ex. 30, pg. 5, L. 8-12f.)

Such language is not that of exoneration as to the specific charge of unauthorized alteration of the document in question.

COUNT FIVE : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with improper conduct in connection with appearance s before Judge Franklin

Elia.

1. On March 25, 1987, Judge Elia recused himself from the Serrano case in which Respondent was involved, stating :

> " The Court declares a mistrial in the case and I disqualify myself from hearing any other evidence on it." (State Bar, Ex.40,R.T. pg. 10, L. 4-5)

The following day, March 26, 1987 Respondent sent a letter addressed to three judges of the Family Court, including Judge Elia, which concluded with the statement :

> " Should these comments offend you,I ask that you voluntarily disqualify yourself for cause from any of the cases in which I may appear for my clients and

their children." (State Bar, Ex. 42, pg. 2)

Thereafter, on April 7, 1987, Judge Elia issued an Order in the Krage case disqualifying himself from all of Respondent's cases. (Respondent 's Ex. UU). In the first paragraph of a nine-page letter addressed to Judge Elia and dated April 17, 1897, Respondent acknowledged that she was,

" ...in receipt of your Order attempting to disqualify yourself from any case in which I am counsel for either party, which was given to me April 9, 1987, when I appeared ready to argue the Krage matter. "

2. Because Judge Elia had recused himself, a pending motion to reconsider an Order by Judge Elia in the Krage

case was assigned to Judge Fogel for hearing. Respondent object to the re-assignment, correctly, because under C.C.P. Sec. 1008 such a motion must be heard by the same judge who made the original Order. (Respondent's Ex. FFF, pg. 7, L. 16 to pg. 8, L. 8) Accordingly, the matter was reassigned to Judge Elia for hearing on April 28, 1987. Respondent's Exhibit JJJ is a transcript of such hearing.

Respondent argues that at such hearing Judge Elia rescinded his Order recused himself from all of the cases, relying on the following quotation:

" The Court: First of all, if you wish to waive the bias issue, I will hear only the issue of... that was presented to the Court at the hearing that we had. I am

willing to do that. With respect to stating grounds for bias in any further cases, I am willing to do that on a case by case basis. " (Ex.JJJ, pg. 5, L. 13-18)

Respondent did not quote what the judge said earlier in the proceeding:

" There is a request by you, Ms. Lebbos, that the Court actually hear this case.I find that I really should not be doing that, and I am wondering if you wish to waive the bias that would be involved, possibly involved. (Ex. JJ, pg. 3, L.7-10d.)

Respondent did not quote what the judge said later in the proceedings.

" The Court : Well, when you are forcing me and I will state for

the record why I'm refusing to hear any of your cases, Mrs. Lebbos." (Ex. JJJ, Pg. 8, L. 9-11).

Respondent also failed to quote another statement :

" The Court : Your conduct is outrageous and insulting, madam. That is why you are not to appear in my court ever again. I have recused myself. I will continue to recuse myself. " (Emphasis added).

Respondent had clear notice that Judge Stewart 's Order of April 7, 1987, recusing himself from all of Respondent's cases was never rescinded.

3. Despite such knowledge, Respondent appeared in Judge Elia's Courtroom

with clients on two occasions, and refused to leave the Courtroom when asked, (State Bar, Ex. 44 and 45) Respondent made several other disruptive appearances in Judge Elia 's Courtroom. (State Bar, Ex. 46 ; testimony of Judge Elia)

4. In the Silvia matter (State Bar, Ex.44) Respondent was attorney for Deanna Silvia. Respondent told Silvia the matter would be heard before Judge Elia on April 7,1987, and indicated that Respondent had a favorable relationship with Judge Elia. Respondent did not tell Silvia of Respondent's March 26, 1987 letter asking Judge Elia to disqualify himself from all of Respondent's cases.

When Respondent and Silvia arrived at Judge Elia's courtroom on April 7,

1987, the court was not yet in session so they seated themselves in the court room.

Judge Elia became aware of their presence, and dircted the bailiff to instruct Respondent to leave the court room. The bailiff did so. Respondent replied loudly, calling the judge an " asshole," and stated that it was a public courtroom and that Respondent has a right to remain. At the time, in addition to Court attaches, there were about 20-25 spectators in the courtroom.

Thereafter, Respondent refused to budge for about 15 minutes. She finally left when Judge Elia took the bench and personally ordered her out. That Respondent so intended to remain in defiance of the court's Orders is

manifested by Respondent 's request to Attorney Harold F. Alphonse to join her in remaining there so that " we can aggravate him." Attorney Alfonse refused to aid and abet Respondent's conduct. (Respondent's Ex. VV)

5. At the culpability hearing, Respondent asserted, without foundation, that she really went to Judge Elia's courtroom because it was necessary to go there to obtain a mediation slip. To the contrary, such slips could be obtained in any Court department. A clerk would hand them out upon request. In addition, Silvia testified that, during the incident, Respondent never requested such a slip.

6. Respondent's attempt to excuse her profanity on the basis of the attor-

ney - client privilege is frivolous : (1) Respondent's defamation of Judge Elia was said in the presence of third persons and 2) the privilege is that of the client, not the attorney.

COUNT SIX : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with offensive behavior in 1986 and 1987 in violation of B. & P. Code Sec. 6068 (f).

1. On or about Sep. 14, 1986, Respondent directed a letter to Santa Clara Superior Court Judge Komar asserting that the Santa Clara Superior Court is dirty and fails to follow lawful procedures. (State Bar, Ex. 52, pg. 2) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral

or documentary evidence supporting her assertion.

2. On or about September 19, 1986, Respondent filed with the Santa Clara Superior Court a document in support of her motion to disqualify Judge Komar from hearing Lebbos v. Wooten. That document stated, in part:

" It is possible there are a few judges in the county who will be fair to me. There are some who understand due process of law and want proper procedures, notices, hearings and orders issued, and the " Old Boy Club " Ex-Parte-ing opposing counsel to death with improper orders who will be sent back to live in another county less sophisticated than Santa Clara Superior Court County."

(State Bar, Ex. 53, pg. 5, L. 16-

21).

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her implied assertion that some judges in Santa Clara County engage in such misconduct.

3. In a statement of Financial Affairs in connection with Respondent's Chapter 11 Bankruptcy, Petitioner asserted that Petitioner's law practice was terminated July 15, 1986 by " Ex Parte " Order of Judge Conrad Rushing- an illegal Order on a debt pending appeal, bankrupting practice and debtor. " (State Bar, Ex. 17; see also Ex. 53, pg. 5, L. 10-15).

At the disciplinary hearing before

this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

4. On or about Feb. 17, 1987, Respondent asserted that Judge James Stewart is incapable of understanding his oath of office, that he is reckless,that he is deliberately destroying a child's life, and that he is racially biased. (State Bar, Ex. 54) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

5. On or about April 14, 1987, Respondent asserted that Judge Stewart meddles beyond human decency, that he is bigoted, and that court attache Baron is a flunky. (State Bar, Ex. 54, pg. 2.) At the disciplinary hear-

ing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

6. On or about April 16, 1987, Respondent directed a letter to Santa Clara Superior Court Judge Fogel. Respondent circulated copies of a letter to various people. The letter contained assertions concerning Judge Fogel, Stewart, Judge Elia and Rushing. Respondent asserted that they play " politics," and that Judge Fogel will assist in a fraud if he were to sign certain tendered Court documents or hold a hearing in the Sandhir matter.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docu-

mentary evidence supporting her assertion.

7. On or about August 18,1987, Respondent directed a letter to the State Bar referencing Respondent's letter of August 7, 1987. Respondent asserted that Judge Stewart issued fraudulent Ex Parte Orders, that he disobeyed the law, and that he almost caused the death of the Sandhir child. Respondent also knowledge of Family law by Judges Fogel, Elia and Stewart who sit on the Court." (State Bar, Ex. 71)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

8. On or about November 25, 1987, in

the family law clerk's office, and in the presence of other court officials, litigants and attorneys, Respondent called Judge Stewart a " swine." (Testimony of David Cerra and John MacKenzie.) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

9. On or about October 19, 1987, in In re Kemp, Respondent filed documents in connection with a motion to disqualify Judge Thomas Black. In the documents, Respondent asserted (1) that Judge Black would be inclined to favor petitioner Kemp, (2) that Judge Black had ex parte communications with Mr. Kemp, (3) that Judge Black retained the case out of prejudice, (4) that

Judge Black acted out of sex discrimination, (5) that Judge Black was neither reasonable nor impartial, and (6) that Judge Black gave favors to Mr. Kemp (State Bar, Ex. 56, C, H)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

10. On or about November 25,1987, Respondent was found to be in contempt of Court in the Webber matter. In a hearing before Judge Stewart, Respondent had persistently ignored the judge's warning that he was not going to permit her to use his Court " as a forum to express her personal views." The adjudication of contempt was a final adjudication.

11. On or about August 10, 1987, in documents filed in Marriage of Jones, Respondent asserted that Martha Olson, Court-appointed counsel for the Jones children, had told Respondent's client that she, Olson, had been abused as a child. Respondent also referred to Judge Elia as a victim of child abuse. The latter sought the removal of the court-appointed attorney and was intended to invoke proceedings for a change of attorney for such children. (State Bar, Ex. 69)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

12. On or about August 10,1987, in documents filed in Marriage of Jones,

Respondent accused Attorney Martha Olson of disbarable conduct, fraud, and perjury. (State Bar, Ex. 69)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

13. On or about Feb. 12, 1988, Respondent wrote to Commissioner Kittle in connection with ongoing litigation between Jeradlin Spradlin (as Conservator of the Estate of Alan Munn) and Respondent and her client, Citizens for a Review Board. (State Bar, Ex. 66, 68) In the letter,Respondent referred to a matter known as the Bittle embezzlement, Respondent accused Commissioner Kittle (1) of botching the matter, (2) failing to

perform her official duties,(3) being " involved in the worst scandal and criminal embezzlement imaginable " by failing to act properly, and (4) participating in a criminal conspiracy. (State Bar, Ex. 58, 66, 68.)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

14. On or about Feb. 12, 1988, Respondent wrote to Santa Clara Superior Court Presiding Judge Peter Stone. Respondent referred to a matter known as the Bittle embezzlement. In the document, Respondent accused Judge Stewart, Judge Fogel, Commissioner Kittle of (1) " gross bungling " in the matter, (2) causing the embezzle-

ment, and (3) being accessories to the crime. It also asserted that (1) they belong in prison, and (2) that they are not Court Officers, but rather " four stooges in drag. "

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

15. On or about Feb.12,1988, Respondent directed a letter to Judge Fogel asserting (1) that he caused grievous harm and hurt to children and parents, (2) that he was guilty of judicial misconduct, (3) that he had perpetrated probable criminal acts in attempting to cover up for one Phil Hammer who, Respondent asserted, was guilty of " gross mal-

practice " in the Munn matter, (4) that Judge Fogel may be guilty of criminal conspiracy to obstruct justice, (5) that he had failed to perform his duty as a judge, (6) that he was incompetent, and (7) that he was guilty of political bungling. (State Bar, Ex. 60.)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

16. On or about Feb. 17, 1988, Respondent directed a letter to Paul Jacobs Esq., with copies to Judges Stone Fogel, Elia, Ambler, Commissioner Kittle, and others. In it, Respondent (1) asserts that Jacobs, Stewart, Fogel and Kittle

committed errors and omissions which were an outrage in the name of the law, 2) asserted they attempted to cover up the errors and compounded a felony, and 3) invited Jacobs to " take your compulsions out of County at once, with Phil Hammer and any embezzlers around. " (State Bar, Ex. 63)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

17. Respondent directed a letter to Donald Breer of the State Bar with reference to its Family Law Accounting Seminar. After mentioning that Judge Fogel was "featured," she asserted that Judge Fogel had covered up Family

Court embezzlements from the police and authorities to protect to protect Phil Hammer. (State Bar, Ex. 64)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

18. On or about February 20, 1988, Respondent directed a letter to Santa Clara Superior Court Presiding Judge Peter Stone. The subject matter of the letter was indicated as " Re: Mass murders caused by the Family Court Incompetence. " Respondent asserted that by signing an Ex Parte Order in the Farley case, " Commissioner Kittle signed seven persons' death warrants." (State Bar, Ex. 68).

At the disciplinary hearing before

this State Bar Court, Responpondent failed to produce any oral or documentary evidence supporting her assertion.

19. On or about February 29,1988, in Munn v. Lebbos, Respondent filed a declaration (State Bar, Ex. 66.) containing the following assertions:

a. Judge Elia had abused the parties in family law matters

b. Judge Fogel acted out of political motives.

c. Judge Elia's Order in Black v. Farley was the cause of the mass murders.

d. The Judges of the Family Court had done nothing to " clean up the worst Family Court in history "

e. That it must be assumed that the

Judges of the Family Court will be biased, prejudiced, and predisposed to lack of neutrality.

f. That the Judges of the Family Court are ignorant.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertions

20. On or about February 23, 1988, in Munn v. Lebbos, Respondent directed a letter to Donald Breer, Section Administrator of the State Bar. In it, Respondent asserted that Judge Fogel :

" ... as Supervising Judge of the Family Court, is responsible for being instrumental and allegedly covering up the worst embezzle-

ments in Family law history and now-this-the worst mass murders in the entire history of Family Law in the world."

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertions.

COUNT SEVEN: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with making false statements about persons with no factual basis to support them.

1. On or about December 22, 1986, Respondent filed a Chapter 11 Bankruptcy Petition asserting that her law practice was terminated July 15, 1988 by an illegal Order on a debt pending appeal.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

2. During the period from approximately August through September, 1986, Respondent left messages on her answering machine informing any caller that a Federal Grand Jury was investigating attorneys John Miller and Mary Anne Grille. The message also stated that Respondent was herself testifying before such Grand Jury on such matters.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

After a protest by Miller, Respondent made certain changes to the message, but taped an assertion that she was testifying daily before a grand jury for over four (4) months.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

3. On or about September 14, 1986, Respondent directed a letter to Judge Jack Komar, the Judge in the Wooten case (State Bar, Ex. 52) asserting that criminal and State Bar charges were being filed against Miller and Grille.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docu-

mentary evidence supporting her assertion.

4. In or about April, 1987, Respondent directed a letter to Judge Elia relating to disqualification. (State Bar, Ex. 43) In it, she asserted that Judge Rushing deliberately set out to bankrupt Respondent out of spite.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docuumentary evidence supporting her assertion.

5. Respondent asserted that Judge Black awarded custody of the children in the Kemp matter without notice to the other party. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her

assertion. The contrary, State Bar Ex. 72 shows that it was a contested custody hearing lasting five (5) days, with all the parties present.

6. On or about Nov, 23, 1987, Respondent filed documents with the Court of Appeal that the State Bar had decided not to bring charges against her based on Judge Fogel's complaint. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

7. On or about Feb. 29, 1988, Respondent filed documents with the Santa Clara Superior Court in Munn v.Lebbos asserting that the State Bar had decided not to bring charges against her based on complaints of Judges Fogel, Judge Stewart and Judge Elia.(State

Bar, Ex. 66, pg. 8,L. 16-25). At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion. The fact the hearing took place demonstrates other-otherwise.

8. On or about Feb. 27, 1988, Respondent issued a letter accusing the court of issuing an OSC in Black v. Farley without a proper supporting affidavit. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

9. On or about February 9, 1988,Respondent issued a letter asserting that Judge Stone converted property belonging to the Federal Court. (State Bar,

Ex. 61, last par.) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

10. On or about February 12, 1988, Respondent directed a letter to Santa Clara Superior Court Presiding Judge Stone in which Respondent asserted the existence of an Order of the Federal Court to turn over certain money. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

COUNT EIGHT: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with repeatedly filing improper motions

to disqualify Superior Court Judges. 1. On or about February 17, 1987, Respondent filed a motion with supporting declarations attempting to disqualify Judges Stewart, Fernandez, Foley, and the entire Santa Clara Superior Court for actual bias and prejudice " in the Sandhir case. (State Bar,Ex. 21, pg. 1, L.17-24; pg.11,L.5-15)

Respondent issued a further letter dated March 26, 1987, asking that Judges Stewart, Elia and Fogel disqualify themselves " for cause from any of the cases in which I may appear for my clients and their children." (State Bar, Ex. 42, page.2)

The Judicial Counsel assigned Sacramento Judge James T. Ford to hear the matter. By decision filed April 30, 1987, Judge Ford denied the motion

in its entirety and holding that none of the judges mentioned by Respondent were disqualified.(State Bar, Ex.82)

3. Without following the statutory procedures specified by C.C.P. Sec. 1008 or utilizing the procedures available to Respondent in the appellate Courts, Respondent thereafter:

a. By letter of June 12, 1987, " assumed (Judge Fogel) is disqualified."

b. By letter of July 1, 1987, asserted that Judge Stewart was disqualified. (State Bar, Ex. 85)

c. Attempted to disqualify Judge Stewart in Lindsey v. Lindsey (State Bar, Ex. 86, 90)

d. Attempted to disqualify Judge Stewart in Young v. Rease (State

Bar, Ex.95)

e. Attempted to disqualify Judge Stewart in Webber v Webber (State Bar, Ex. 86, 90)

f. Attempted to disqualify other Santa Clara Superior Court Judges in Magee, Andrade, Rhedrick (State Bar, Ex. 98, 99, 102,103, 104, 105)

3. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utilizing the procedures available to Respondent in the appellate courts, Respondent thereafter filed a motion to disqualify Judge Stewart in Chaparro v. Chaparro. The motion was heard by Santa Clara Superior Court Presiding Judge David W.Leahy. On Nov.23, 1987, Judge Leahy denied the

motion and struck from the record Respondent's statement of disqualification. Judge Leahy also noted that it was but a repeat of grounds unsuccessfully used in the prior attempts to disqualify Santa Clara Superior Court judges. (State Bar, Ex. 107)

4. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing the procedures available to Respondent in the apellate courts, Respondent thereafter filed a document on Feb.29, 1988 in Munn v. Lebbos attempting to disqualify for cause all judges of the Santa Clara Superior Court.

The motion was heard by Judge Leslie C. Nichols, assigned by the

Judicial Council. On March 1, 1988 Judge Nichols denied the motion in its entirety.

5. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing the procedures available to Respondent in the appellate courts, Respondent thereafter filed a document on Feb, 29, 1988 in Munn v. Lebbos to disqualify for cause all judges of the Santa Clara Superior Court.

The motion was heard by Judge Leslie C. Nichols, assigned by the Judicial Council. On March 1, 1988 Judge Nichols denied the motion in its entirety.

6. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing

the procedures available to Respondent in the appellate courts, Respondent thereafter filed a document on May 20, 29, 1988 in Munn v. Lebbos described as a " Special Appearance/ Disqualification." Judge Stone then issued an Order " striking Respondent's Purported Statement of Disqualification, " noting that it was " strikingly similar to statements of disqualification filed by this same attorney in various cases in this county, including one filed February 29, 1988." 7. State Bar Exhibits 42, 54, 58, 59, 60, 61, 63, 64, 65, 67, 68, 83, 85, 109 and 110 are a series of letters Respondents directed to various judges in an effort to exasperate them to the point that they would recuse themselves from her cases, thus accom-

plishing what Respondent was unable to accomplish by disqualification motions in court.

8. Respondent's constant barrage of calumny, deceit, and harassment has not only hampered the work of the Family Court, it has also made the operation of the entire Justice System in Santa Clara more burdensome.

(a) Respondent 's cases necessitate special handling, and judges from other civil departments must accept assignments that normally would be heard by Family Court Judges.
(Testimony by Judges Stone, Fogel, and Stewart).

(b) Judge Elia was so goaded by Respondent's conduct that he found it necessary to recuse

himself from all of her cases voluntarily,

(c) Counsel and clients have been repeatedly obliged to return for Court hearings because of an overburdened Court adding to both the cost and inconvenience of litigation.

All of the foregoing consequences resulted from the display of offensive personality by Respondent.

COUNT NINE : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with naming a person as plaintiff in litigation without such person's consent.

1. On or about October 2, 1986, Respondent filed an action in the federal court. In it, Respondent identified McCutcheon as a plaintiff, together

with others. (State Bar, Ex.116)

2. McCutcheon did not retain Respondent to represent McCutcheon in such litigation, did not want to be in the case, and did not authorize Respondent to include McCutcheon as a plaintiff therein. (State Bar, Ex. 36.)

CONCLUSIONS OF LAW

The Compensated Referee herein concurs with the Conclusions of Law contained in the Decision by the Honorable Leland J. Lazarus filed herein on January 9, 1989. The full text of those Conclusions of Law is incorporated herein by reference. Briefly re-stated, Respondent has violated numerous provisions of the Business and Professions Code and the Rules of Professional Conduct.

1. Business and Professions Code

section 6068 (a):

Respondent has repeatedly failed in her duty to support the laws of this state. Respondent has wilfilly and repeatedly violated the oath taken by her and has wilfully violated her duties as an attorney.

2. Business and Professions Code section 6068 (b):

Respondent has repeatedly failed in her duty to maintain the respect due to the Courts of justice and judicial officers.

3. Business and Professions Code section 6068 (c):

Respondent intentionally initiated and maintained groundless proceeding in her efforts to disqualify Santa Clara Superior Court judges.

4. Business and Professions Code

section 6068 (d):

Respondent knowingly, and with intent to deceive, prepared false Court documents.

5. Business and Professions Code section 6068 (f):

Respondent has egregiously failed in her duty to abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party unless required by the justice of the cause..

6. Business and Professions Code section 6068 (g):

Respondent has initiated groundless proceedings from corrupt motives of passion and interest.

7. Business and Professions Code section 6103: Respondent has willfully violated the oath taken by her and has

willfully violated her duties as an attorney.

8. Business and Professions Code section 6106: Respondent has willfully perpetrated acts of moral turpitude and dishonesty in that Respondent :

(a) Intentionally altered court documents.

(b) Intentionally concealed assets.

(c) Intentionally made groundless charges of professional misconduct, judicial misconduct, sexism, racism, and criminal conduct against others.

9. State Bar Rules of Professional Conduct, Rule 1-110 : Respondent intentionally initiated groundless legal actions, and asserted positions

in litigation, solely for the purposes of harassment and spite.

10. State Bar Rules of Professional Conduct, Rule 7-105 (1) : Respondent intentionally engaged in deceitful and deceptive practices with the intent to deceive the court and counsel in that Respondent:

(a) Intentionally altered documents,

(b) Intentionally concealed assets.

(c) Employed means not consistent with truth in her dealings with the Court and opposing counsel.

(d) Initiated litigation on behalf of a person Respondent did not represent, who did not want to be in the litigation, and who did not want to be named as a party.

11. State Bar Rules of Professional Conduct, Rule 8-101 (A): Respondent filed to keep client funds in one or more identifiable bank accounts labelled " Trust Account." " Clients Trust Account," or words of similar import. Respondent also commingled client funds with her own funds.

SUBSTANTIAL THREAT OF HARM

In accordance with the provisions of Section 794 of the Rules of Procedure of the State Bar,and Section 5007 (c) (2) of the State Bar Act, and based on the Findings of Fact and Conclusions of Law hereinabove set forth, the Compensated Referee herein determines :

(A) That the Respondent's conduct has caused substantial harm to the public, is causing substantial harm

to the public, and poses a substantial threat of harm in the future to the public.

(B) That there is a reasonable likelihood that the harm will reoccur or continue, and

(C) The balance of interests, as between the attorney on the one hand and the public on the other hand, favors an involuntary inactive enrollment.

There is clear and convincing evidence that Respondent lacks remorse for her actions, fails to understand the obligations which she bears as a member of the State Bar of California, and, given an opportunity, will continue to engage in a continuation of the conduct which places excessive, and unnecessary burdens the admini-

istration of justice in the County of Santa Clara and elsewhere.

Respondent's constant barrage of calumny, deceit, and harassment has not only hampered the work of the Santa Clara Family Court, it has also made the operation of the entire justice system in Santa Clara Superior Court more burdensome.

Respondent's cases necessitate special handling, and judges from other civil departments and other counties must accept assignments that normally would be heard by Family Court judges.

Counsel and clients have been repeatedly obliged to return for court hearings because of an overburdened court adding to both the cost and inconvenience of litigation.

All of the foregoing consequences resulted from the display of offensive personality by Respondent. There is not the slightest indication in the record that Respondent will do other than conduct herself in utter disregard and defiance of not only the Rules of Professional Conduct, but also common decency.

We must quote with approval the language of the California Supreme Court in Re Nevill (1985) 39 C. 3d. 729, 735 :

" While we are not insensitive to the personal and professional problems that frequently besiege the pracititioner (citations omitted) it is our duty to protect the public from those attorneys who, for whatever reason, are unable to cope with the

pressure and adversity. The safety of The public and the integrity of the profession require no less."

ORDER FOR INACTIVE ENROLLMENT

It is the order of the undersigned that Respondent BETSEY WARREN LEBBOS be enrolled as an inactive member.

Dated: February 13,1989

L.J. DEWALD

L.J. DeWald,
Compensated Referee